

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.3232/Del/2019, A.Y. 2009-10

Sh. Bhim Sain Gupta K 736, GadaiPur, Mehrauli Road, New Delhi-110030 PAN : ADKPG7977R	Vs.	ACIT, Circle-47(1), New Delhi
(Appellant)		(Respondent)
Appellant by	Mr. Mirzamuhiuddin Baig, CA	
Respondent by	Sh.Kanv Bali, Sr.DR	
Date of Hearing	20/05/2024	
Date of Pronouncement	28/05/2024	

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the Assessment Year [In short, the 'AY'] 2009-10, preferred by the appellant/assessee, challenges the order dated 24.01.2019, of the Commissioner of Income Tax (Appeals)-16, New Delhi [In short, the 'CIT(A)'].

2. The appellant/assessee challenged, vide 9 grounds of appeal, the finding of the CIT(A) upholding (i) reopening of the assessment and (ii) enhancement of the income.

3. The relevant facts for deciding this appeal, in brief, are that the appellant/assessee filed his original return of income on 30.09.2009 declaring income of Rs.7,38,520/-. The Assessing Officer [In short, the 'AO'] scrutinized the case and assessed the income at Rs.81,20,650/-, by making additions on account of bogus sundry creditors & long term capital gains under section 50C of the Act and disallowance of certain non-business expenses, under section 143(3) of the Act on 30.12.2011. On first appeal, the assessed income as per the original assessment order dated 30.12.2011 was reduced to Rs.8,11,900/-. Aggrieved with the order of the CIT(A), the Revenue appealed before the Tribunal (ITA No. 3252/Del./2012), who remitted the matter back to the CIT(A). Meanwhile [during the set aside proceedings before the CIT(A)], the AO received certain information from the Investigation Wing of the Income Tax Department. Based on that information, the AO reopened the case under section 147 of the Act. Vide order dated 08.12.2016, the AO; observing as under, completed the assessment at income of Rs.81,20,650/-under section 147 of Act:-

“5. From the perusal of the case records for AY 2009-10, it is seen that the income of the assessee has already been assessed u/s 143(3), including the claim of business loss and set off the capital gains against this loss. Further, the case is currently sub-judice at the level of the CIT(A) after being set aside by Hon’ble ITAT. In view of the above facts, the income of the assessee is being assessed at Rs.81,20,650/- as per order u/s 254 giving effect to the order of Hon’ble ITAT vide ITA No.3252/Del/2012.”

3.1. Aggrieved with the reopened assessment order dated 08.12.2016, the appellant/assessee challenged it before the CIT(A), who dismissed the appeal vide order dated 24.01.2019. Thereafter, the matter was raised before us.

4. At the outset, the Ld. AR contended that the Ld.CIT(A) decided the matter ex-parte. Hence, the issue may be remitted back to him to decide the appeal on merit. Further, our attention was also drawn to the fact that the CIT(A), vide order dated 20.12.2017, had decided the restored appeal (by the Tribunal in the ITA No. 3252/Del./2012) allowing major relief. The appeal effect resulted the assessed income at Rs. 8,11,900/-. It was further contended that the income reassessed, vide order dated 08.12.2016 passed under section 147 of the Act, at Rs. 81,20,650/-, was subject to the outcome of the pending appeal at that point of time before the CIT(A). Since the original assessment, at income of Rs.81,20,650/-, had attained the finality at Rs.8,11,900/-; therefore, the reopened assessment which was based on the outcome of the set aside appeal by the CIT(A) also needed to be restricted to the income of Rs. 8,11,900/-. On the issue of reopening under section 147 of the Act, the case was requested to be set aside before the CIT(A).

5. The Ld. AR, emphasizing on the order of the CIT(A), prayed dismissal of the appeal.

6. We have heard both the parties and considered the material available on the record. The original assessment had attained the finality at Rs.8,11,900/-. The AO; except referring the original assessment order sub-judiced before the CIT(A), has not given any justification for computing the income under section 147 of the Act. Therefore, at most, the fate of the reassessed income would be the same as of the original assessment on the reasoning that the reassessed income is based on the original assessment. Since the issue of reopening of the assessment was decided ex parte; therefore, we are refraining to adjudicate this issue on merit.

7. We have considered the facts of the case in entirety and perused the orders of the subordinate authorities. We are of the considered view that this case is fit for remitting back to the CIT(A) to decide the appeal on merit after affording reasonable opportunities of being heard. Accordingly, we order so. However, we are refraining from commenting on merit of the case.

8. In view of the above, the appeal of appellant/assessee is allowed for statistical purposes.

Order pronounced in open Court on 28th May, 2024.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Dated:28/05/2024
Binita, Sr. PS

Sd/-

(AVDHESH KUMARMISHRA)
ACCOUNTANT MEMBER

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- 1.Appellant
- 2.Respondent
- 3.PCIT
- 4.CIT(Appeals)
- 5.DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI